



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A hearing by telephone conference was held on January 14, 2019. The Tenants applied for the following remedy, pursuant to the *Residential Tenancy Act* (the *Act*):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67.

The Landlord attended the hearing with a witness. One of the Tenants, R.N., attended the hearing. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the Tenants entitled to compensation for money owed or damage or loss under the *Act*?

Background and Evidence

The Tenants stated that they are looking for \$5,800.00 in compensation because they were prevented from being able to move into the rental house. One of the Tenants, R.N., stated that she had signed the tenancy agreement on August 3, 2018, and was supposed to move into the rental unit as of September 1, 2018. A copy of this tenancy agreement was provided into evidence. The Tenant stated that her and her fiancé, J.R., (the other Tenant), had an agreement with the Landlord whereby they would help with cleaning and painting, leading up to their move-in date of September 1, 2018. R.N. stated that her partner was paid to do the painting inside the rental unit, and she was paid to do some cleaning.

The Tenant stated that when they arrived on September 1, 2018, things began to go sideways. The painting was not complete, the Landlord was not happy. The Tenant stated that the Landlord refused to let her and her fiancé move in, and it ended up costing them lots of money in hotel, moving, and storage costs. The Tenant is also looking for compensation for the mental distress.

R.N. provided a monetary order worksheet to highlight her claim as follows: they are seeking \$1,600.00 x 2 for the cost to rent a different place (motel). They are also seeking \$500.00 x 2 for the "deposit" required for the 2 months at the alternative place they rented. The Tenants also stated that they are looking for \$263.00 x 2 for the two months' worth of storage costs, due to being unable to move into the rental unit. The Tenants are also looking for \$1,074.00 for "mental distress". In total the Tenants are seeking \$5,800.00 for these items.

The Landlord agreed that a tenancy agreement was signed on August 3 or 4, 2018, and that the Tenants were going to move in on September 1, 2018. The Landlord stated that she had an agreement where she was to pay J.R. to repaint nearly the entire inside of the rental unit. The Landlord stated that the painting was agreed to be completed by August 31, 2018, and when she showed up on this date, it was not even close to done. The Landlord stated that she gave J.R. the rest of the evening to finish painting, and stated that she would return the following morning. The Landlord stated that she returned the following morning and noticed that the painting was still not done. The Landlord stated that the Tenants could not be reached. The Landlord stated that later that day, J.R. spoke with her and told her that he did not want to move in anymore, that the tenancy agreement was cancelled, and that he and his fiancé were breaking up.

The Landlord stated that both tenants had asked for the deposit back, and she wasn't sure who to return it to.

The Landlord stated that later that day, September 1, 2018, J.R., came back and indicated he wanted to finish the painting in the rental unit, as he was being paid to do. The Landlord stated that she was agreeable to this, as he was being paid to paint for her. The Landlord stated that when she came back on September 2, 2018, both of the Tenants asked for the security deposit back, and signed a mutual agreement to end tenancy (provided into evidence). The Landlord stated that she returned the deposit, and all parties signed the mutual agreement which stated the following:

“damage deposit of \$750.00 returned. Tenant no longer moving in”

This brief agreement was signed by both tenants and the Landlord. At the top of this document, it is titled “mutual agreement to end tenancy”. However, the Tenant stated that the Landlord must have added this title this after the fact, because this was only an agreement about the security deposit. Although the Tenant acknowledged that she signed and agreed to the fact that she got back the security deposit and that she was no longer moving in.

The Landlord brought a witness to the hearing, who testified that the Landlord’s recollection and recount of the events is accurate, as he was with her the whole time, as she attended the premises over those few days. The witness stated that he overheard the conversation on September 2, 2018, and corroborates that the Tenants signed this mutual agreement to end tenancy, that the Landlord did not alter it after the fact, and that the Tenants were explicitly agreeing both in this written agreement, and verbally, that they wished to end the tenancy, as long as they got their security deposit back right away. The Landlord stated that she signed this document and returned the security deposit right away. The Landlord stated that she ended up losing out on rent for that month because of this issue. The Landlord stated that it was J.R. who expressed he wanted to break up with the other Tenant, R.N., end the tenancy, and move on. The Landlord does not feel it is fair for her to have to compensate the Tenants further, since it was their relationship issues that caused the problems and the demise of the tenancy.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of

probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. The Tenants must also provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenants did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

After reviewing the totality of the evidence, and testimony before me, I am mindful that the relationship between the parties has degraded significantly since when the tenancy agreement was entered into. I note the parties worked together on several items leading up to the start of the tenancy (painting etc.). I note that, despite both parties doing work to prepare the rental unit for move-in and tenancy, ultimately this did not materialize.

The Tenant stated that the tenancy agreement went sideways because the Landlord decided not to rent to them. However, the Landlord provided a different version of events, and stated that one of the Tenants, J.R., spoke to her (as he was in the middle of painting, prior to moving in) and gave verbal notice to her that he wanted to back out of the tenancy agreement, as he and his fiancé were splitting up. The Landlord's witness confirmed that he heard this conversation. The Tenant, R.N., also stated that she did not agree to end the tenancy by way of a mutual agreement to end tenancy, and she was just trying to get her security deposit back after having disagreements with the Landlord.

I note the Tenant alleges that the document she and the other Tenant signed did not say "mutual agreement to end tenancy" at the time she signed it. However, the Landlord stated that it did, and brought a witness with her to corroborate this. The Landlord stated that this mutual agreement was signed because the Tenants were having relationship

issues, and sought to back out of the tenancy agreement almost immediately after the tenancy began. I note the Tenant did not bring any witnesses with her, nor did she present or speak to any corroborating evidence regarding this mutual agreement.

When weighing these two versions of events, I find the Landlord has provided a more compelling and detailed account of what happened surrounding the end of the tenancy. After weighing the evidence before me, I find it more likely than not that the document the Tenants signed read “mutual agreement to end tenancy”, at the time they signed it. I also note this agreement specifies that the Tenants were no longer moving in, and that their security deposit would be returned. This is all signed by both Tenants and the Landlord. Further, I note the Landlord’s witness was at the hearing and stated he was present and that it was clear the Tenants intended to sign a mutual agreement to end tenancy, as they wanted out of the tenancy agreement, and wanted their security deposit back so they could move on.

Having reviewed the mutual agreement to end tenancy signed by the parties and considered all the testimony at the hearing, I find it more likely than not that both parties intended to end the tenancy when they signed it only 1 day after the tenancy actually started. I find the tenancy ended by way of this mutual agreement. Since the Tenants signed a mutual agreement to end tenancy, I find they are not entitled to the compensation they have sought in this review (moving costs, hotel costs and emotional distress).

The Tenants’ claim is dismissed in full, without leave to reapply.

Conclusion

The Tenants’ application is dismissed, in full, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 15, 2019

Residential Tenancy Branch